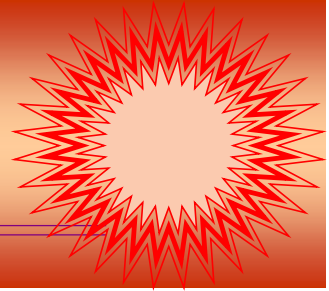




Issue No. 33

Ethics News



November 2003

Holiday Gifts

Tis the season to be aware of what you can and cannot accept. As the holidays approach, it's a good idea to be prepared if you are offered anything of value. So what should you know? The first thing you need to be aware of is how your job responsibilities may affect any offers you might receive from non-governmental persons or entities. In other words, if you can take any discretionary action in regard to the gift-giver (in your official capacity), you are **not** permitted to accept the gift. A few examples of discretionary action include issuing permits and licenses, awarding or overseeing contracts, and performing field audits.

What if you don't have any discretionary action over the gift-giver? Can you then accept a gift? If the value of the gift is less than \$25, you may accept the gift. Remember, that is, if there is no action you can take toward the gift-giver. If the value of the gift is \$25 or more, you must get written approval from your Ethics Officer. (Click [here](#) to see list of Ethics Officers.) This applies when the gift-giver has a business relationship with your agency. **Be aware that \$25 is the maximum you may receive in gifts from a person in a calendar year.**

Gifts may be accepted by an employee on behalf of an agency and become state property. Some agencies have procedures, which require approval of such gifts. Contact your agency head or ethics officer for advice. Since the gift rule applies to individuals, if an agency receives gifts of food and refreshments of nominal value intended for several or all of the agency's employees, then the agency head or ethics officer needs to decide if acceptance of the gifts is appropriate. **Agencies are discouraged from accepting gifts from persons or entities with which they have (or are considering) a business relationship.**

Generally, employees may give gifts to one another and to supervisors. However, if the receiving-employee could take official action concerning the gift-giving employee or the gift-giving employee has a business relationship with the receiving-employee's agency, then the same analysis of the situation applies as above with non-governmental persons or entities.

How do you dispose of a gift you may not accept? Just return the item to the gift-giver or pay the fair market value to the gift-giver. An agency may dispose of or return gifts at government expense. When it is not practical to return an item (such as a perishable), the item may be given to a charity, shared within the office, or destroyed.

For more information on the gift rule (40 IAC 2-1-6), [click here](#)



Recent Enforcement Proceedings

The State Ethics Commission approved the following reports regarding two state employees who had waived their right to a public hearing, and entered into agreed settlements.

Case #03-C-6

On September 11, 2003, the Commission accepted a proposed agreed settlement by a state employee who sold Avon products on state property to fellow state employees.

The state employee distributed Avon catalogs at her state office with her state office phone number written on the backs of the catalogs. She accepted orders and checks for Avon products and distributed the products to state employees on state property. On at least one occasion, the state employee returned cosmetic items to Avon via US Mail and used state postage to do so.

The state employee's selling and distribution of the above-referenced Avon cosmetic products on state property was found to be in violation of 40 IAC 2-1-9(f) and (g).

In the agreed settlement, the state employee agreed to: receive a written reprimand from her supervisor; refrain from accepting Avon orders, distributing Avon catalogs, and making Avon product deliveries at state offices; refrain from selling any other products on state property; pay a \$100.00 civil penalty; and reimburse the state for the cost of the postage to return the Avon products.

Text of 40 IAC 2-1-9(f) and (g) Conflict of interest prohibitions

(f) A state officer or employee shall not make use of state materials, funds, property, personnel, facilities, or equipment for any purpose other than for official state business unless the use is expressly permitted by general written agency, departmental, or institutional policy or regulation, considering the cost and the benefit by such use.

(g) A state officer or employee shall not engage in, or direct others to engage in work other than the performance of official duties during working hours, except as permitted by general written agency, departmental, or institutional policy or regulation.

Commission meetings are open to the public and held the second Thursday of the month. Normal starting time is 10:00 a.m.

Case #03-C-04

October 9, 2003, the State Ethics Commission, by majority vote, approved the following report regarding a state official.

The state official acknowledges that, at the request of the campaign staff of the mayor of Indianapolis, he permitted the mayor to use his personal office to film a political campaign commercial on Wednesday, April 16, 2003. The filming of the campaign commercial began at 7:00 a.m. and concluded at approximately 10:00 a.m. The state official did not personally participate in the filming or personally derive any benefit that might be considered a conflict of interest.

There was no disruption to official activities because the state official had meetings scheduled away from his personal office on the morning of April 16, 2003. Moreover, there was no disruption to the administrative functions of the state official's office because filming activities were confined to the state official's personal office.

On March 18, 2003, the State Ethics Commission issued [Advisory Opinion 03-I-1](#) which addressed the use of state officials' offices for partisan political events. In the opinion the Commission specifically determined that the offices of state officials should not be used for partisan political events during normal state business hours.

On March 21, 2003, the state official's office received a copy of Advisory Opinion 03-I-1 that was sent by the State Ethics Commission but the correspondence was not brought to the attention of the state official until after the filming of the campaign ad.

The state official accepted responsibility for permitting the filming and for the fact that the Commission's correspondence was not promptly delivered to the office's ethics officer. He acknowledges that had he known of the Advisory Opinion prior to the filming, he either would have asked his counsel to consult with the Commission staff for further guidance, or decided not to permit the filming.

In the agreed resolution, the state official agreed to accept a letter of guidance from the State Ethics Commission; to institute a written policy concerning the use of his office space that prohibits the office from being used for partisan political events during normal state business hours; and to institute a written policy to ensure that future communications from the State Ethics Commission, such as Advisory Opinion 03-I-1, are promptly delivered to the office's ethics officer.



A man can do only what a man can do. But if he does that each day he can sleep at night and do it again the next day.

_____ Albert Schweitzer

Staff Advice

This article briefly reviews questions recently addressed by the Ethics Commission staff. The advice is not intended as a comprehensive analysis of the issue raised. For more information on whether and how this information may apply in another situation, contact your [agency Ethics Officer](#) or the State Ethics Commission.

NOTE: Please be advised that the opinions in these answers merely interpret and apply the State Ethics Commission's laws, regulations, and policies. The fact scenarios presented in these questions could possibly violate other agency laws, regulations, rules, or policies.

Q. What is a representative of a company that has a business relationship with a state commission allowed to give to the chairperson of the commission?

A. Part (a) of the gift rule precludes the representative from giving anything of value to the commissioner since it could be argued that the chairperson is in a position to give the company special consideration.

Q. Do contractors have to work so many hours to come under the jurisdiction of the Ethics Commission?

A. An individual who contracts with an agency for personal services for more than thirty (30) hours a week for more than twenty-six (26) weeks during any one (1) year period comes under the Commission's jurisdiction.

Q. A friend of mine is applying for a state job and has asked me to write her a letter of reference. May I use state stationery to do so?

A. You may use state stationery as long as you are recommending the individual for state employment. State stationery is to be used for official state business. Included in official state business are letters to recommend a current or former state employee for another state position, for admission to a school, or for acceptance in a program. However, when writing a letter of recommendation or a character reference on state stationery, the reference must be based upon personal knowledge of the ability or character of an individual the employee has worked with in the course of state employment.

Q. A photographer is offering free 10 x 13 color canvas portraits to state employees. Additional portrait selections will be offered at discounted rates. Sitzings are being scheduled on Saturdays and Sundays at the Indiana Government Center South. Can employees in my agency take advantage of this offer?

A. If the photographer offering free and discounted pictures to state employees had a contract with your agency, your employees could take advantage of this opportunity only if they were not in a position to exercise discretion over the contractor, and the value of the offer was under \$25. However, if there is not a business relationship between the photographer and your agency, it is perfectly fine for employees in your agency to receive a free portrait and buy discounted pictures.

Q. I am working with a contractor who is interested in hiring me. Can I leave my state job to go to work for the contractor?

A. You may go to work with the contractor as long as you comply with post-employment restrictions. Under this statute, a former employee is prohibited from representing or assisting a person regarding a particular matter in which the employee participated personally and substantially for twelve months after the former employee had responsibility for that particular matter. In your case, the contract that you worked on with the contractor would constitute a particular matter. So, while you could work for the contractor, you could not work on that particular state contract. (Keep in mind that when negotiating for employment as a state employee you first must be screened from making any decisions regarding the person with whom you wish to negotiate. If you can't be screened, you may not negotiate for employment. See, [Seeking Outside Employment](#).)

Q. My daughter has recently become engaged to an employee whom I supervise. Does my daughter's engagement put me in violation of the nepotism statute?

A. As of now, you do not violate the nepotism statute since the statute does not discuss fiancés. When your daughter marries and your employee becomes your son-in-law, by statute, you may not directly supervise him. However, if you are not his direct supervisor, the managerial layer between you and the employee insulates you from application of the nepotism statute. (Please see Department of Personnel for other applications of state statute.) (See, Nepotism, [IC 4-15-7-1](#)).

Q. Can a state employee sign a petition objecting to a tax that would be levied for the county jail? And if so, can he ask co-workers to sign the petition?

A. It is fine to engage in politics, but the employee shouldn't do it on state time. Accordingly, if the employee wants to ask his co-workers to sign the petition, he should wait until after work is over.

Q. A group of county foster parents received 25 tickets for an upcoming Colts football game from a local television sportscaster for them and their foster children. Since most of the foster parents have younger children and cannot go, they asked our agency if we wanted the remaining ten unused tickets for our Child Welfare staff. Is this allowable?

A. Because your agency doesn't have a business relationship or potential business relationship with the television station, you are not in a position to give preferential treatment to the station.. Accordingly, be advised to go to the game and have a great time! Hopefully the Colts will continue to play well.

Q. Can a DNR employee hold public office?

A. There is a very old law on the books, prohibiting DNR employees from holding public office, it cannot be waived by DNR. However, if the employee's salary does not include any federal money, the Hatch Act would allow the employee to run for office and remain employed by the state until they actually hold public office. If the employee were to transfer to another agency and they were OK under the Hatch Act, they could hold public office.



Remember: Seek advice before you act!

www.in.gov/ethics or (317) 232-3850

No Time for Training?

Look no further than your desktop.

You can now receive ethics training in the comfort of your own work station. Ethics Orientation/Refresher and Ethics for Executives are online at the Commission's Web site at www.in.gov/ethics/training. (Ethics for Supervisors and Managers is coming soon!)

Read what others have to say about the online training:

- **Kent J.** (DBC): "I liked the on-line orientations because it is more time efficient due to the fact that I live and work about three hours from Indianapolis."
- **Michael C.** (Assistant Director): "A very good orientation that touched all the basics."
- **Vicky L.** (Deputy Director): "It got me thinking about certain issues and responses that I may need to know at some point."
- **Mary F.** (Secretary III): "I thought it was a nice, simple way to review the ethics of working with and in the state system."
- **Vicki H.** (Secretary): "Have more detailed and regular on-line sessions available that are acceptable as part of our annual training."
- **Kelly S.** (Program Associate): "I'm glad this training was available online so I could do it on my own time."
- **Cheryl R.** (Assistant Commissioner): "I love the online aspect — it's quick, it's thorough, and you have an opportunity to find out more if you need or want more."

Click here to go to
Online Orientation/Refresher
www.In.gov/ethics/training

Please Note:

Classroom training still is available in the State Conference and Training Center in Indianapolis.
(See, December Classes Open.)

Ethics training will travel throughout the state upon request. Contact Mary Hill at (317) 232-3850.



December Classes Open

Ethics Orientation

December 10
10:00 - 11:00 a.m.

Supervisors & Managers

December 11
10:00-12:30 p.m.

Classes are in the State Conference or Training Center, Indiana Government Center South, 402 W. Washington St., Indianapolis, IN.

Please check directory on day of class for room number.

To register, call (317) 232-3850 or visit our Web site at www.ethics.IN.gov